

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF	)	
STATE OF WASHINGTON,	)	
DEPARTMENT OF SOCIAL AND	)	
HEALTH SERVICES,	)	PCHB NO. 79-27
	)	
Appellant,	)	FINAL FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW
v.	)	AND ORDER
	)	
PUGET SOUND AIR POLLUTION	)	
CONTROL AGENCY,	)	
	)	
Respondent.	)	

This matter, the appeal of two \$250 civil penalties arises from the alleged violations of the Environmental Protection Agency's NESHAPS, 40 CFR 61.22 "Emission Standards" and WAC 173-400-075, a regulation of the Washington State Department of Ecology. A formal hearing was held before the Pollution Control Hearings Board, Dave J. Mooney, Chairman, and Chris Smith, Member, in Seattle, Washington on April 25, 1979. Hearing Examiner Nancy E. Curington presided.

Appellant Department of Social and Health Services (DSHS) appeared

NC/LB

by and through Thomas W. Hayton, Assistant Attorney General. Respondent appeared by and through its attorney, Keith D. McGoffin.

Witnesses were sworn and testified, exhibits were examined. From testimony heard and exhibits examined, the Pollution Control Hearings Board makes these

#### FINDINGS OF FACT

##### I

Respondent, pursuant to RCW 43.21B.260, has filed with this Hearings Board a certified copy of its Regulation I containing respondent's regulations and amendments thereto, of which official notice is taken.

##### II

On February 9, 1979 respondent's inspector observed the remains of a partially demolished wood-frame structure at Fircrest School in King County. Upon closer inspection, he found exposed boiler pipes, wrapped with asbestos material, beneath the building. Pieces of the asbestos material were mixed with other debris on the ground. The inspector spoke with the business manager of Fircrest School, explaining the nature of the violation and the precautions required for handling asbestos and obtained a sample from the demolition site for laboratory analysis. That same day Notice of Violation No. 16749, which cited WAC 173-400-075 and EPA-NESHAPS, 40 CFR 61.22 "Emission Standards" paragraph (d)(1)(ii), and Notice of Violation No. 16750, which cited WAC 173-400-075 and EPA-NESHAPS, 40 CFR 61.22 "Emission Standards" paragraph (j)(3)(i)(B), were sent to the appellant. Notice of Violation No. 16749 contained a description of the violation: "Demolition of structure containing asbestos insulated pipes-failure to provide written

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

notice of intention to demolish or renovate." Notice of Violation No. 16750 contained a description of the violation: "No precautions taken to seal exposed asbestos containing waste material into leak-tight containers." Notice and Order of Civil Penalty No. 4145 for \$250 was issued as a result of the Notices of Violation Nos. 16749 and 16750.

### III

On Tuesday, February 13, 1979 respondent's inspector returned to the demolition site for a follow-up inspection. He found three or four bags containing asbestos, along with more exposed asbestos in the debris on the ground. After explaining the nature of the violation to the business manager of Firlands Correctional Center, the inspector obtained another sample of the material for laboratory analysis. That day Notice of Violation No. 15976, citing WAC 173-400-075 and EPA-NESHAPS, 40 CFR 61.22 "Emission standards" paragraph (j)(3)(i)(B) and describing the violation as "No precautions taken to seal exposed asbestos containing waste material into leak-tight containers", was sent to the appellant; Notice and Order of Civil Penalty No. 4147 for \$250 was issued as a result of Notice of Violation No. 15976.

### IV

Laboratory analysis of the two samples showed that both contained asbestos, one 5%, the other 10%. The sample of February 9, 1979 contained more water than that of February 13, 1979.

### V

Respondent's inspector had been to Fircrest School in February of 1977 on a routine inspection. At that time the inspector spoke with the engineer in charge and left demolition forms and information

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

relating to the regulations dealing with asbestos.

## VI

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings of Fact, the Pollution Control Hearings Board makes the following

### CONCLUSIONS OF LAW

#### I

WAC 173-400-075, promulgated by the Washington State Department of Ecology, specifically incorporates the emission standards of asbestos contained in Title 40, Code of Federal Regulations, Part 61. The subsection cited by respondent in Notice of Violation No. 16749, 40 CFR 61.22 (d)(1)(ii), requires written notification of intent to claim an exemption from the requirements of the paragraph be made to the respondent within at least 20 days of the commencement of the demolition. Appellant contends that since it was not applying for such an exemption, the portion of the Notice of Violation based on this provision should fall.

The Board rejects this argument. While respondent incorrectly cited subsection by number, the section (i.e., 40 CFR 61.22) at issue is described on the face of the Notice and Order of Civil Penalty. RCW 70.94.431 requires that the "notice . . . describ[e] the violation with reasonable particularity . . . ." Since the Notice of Violation also described the violation as "failure to provide written notice of intention to demolish or renovate", the Board concludes that the Notice of Violation was sufficiently specific in its description of the violation to inform the appellant of the nature of the violation.

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

II

The provisions of 40 CFR 61.22(j)(3)(B) require that:

"After wetting, all asbestos-containing waste material shall be sealed into leak-tight containers while wet . . . ."

Appellant clearly violated the above section on both February 9 and 13, 1979. Even though appellant had contained some of the asbestos in plastic bags by February 13, a substantial amount remained exposed, thus violating the regulation. Given the hazardous nature of asbestos, the Pollution Control Hearings Board concludes that the two \$250 penalties are not unreasonable under the circumstances.

III

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Pollution Control Hearings Board enters this

ORDER

The two \$250 civil penalties (total \$500) are each affirmed.

DATED this 5<sup>th</sup> day of June, 1979.

POLLUTION CONTROL HEARINGS BOARD

Dave J. Mooney  
DAVE J. MOONEY, Chairman

Chris Smith  
CHRIS SMITH, Member

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER